

REMARKS

Claim Amendments

Claim 48 has been amended. Support for this amendment is found throughout the specification and drawings, *see, e.g.*, ¶ [0157] and Figs. 74, 75, and 78.

§ 102 Rejection

Claims 48-61 stand rejected under § 102(b) as being anticipated by U.S. Patent No. 5,496,318 (Howland). As amended, independent claim 48 requires, *inter alia*, "a planar unitary body having a first end defining a first saddle, a second end defining a second saddle, and first and second opposed sides extending therebetween." In rejecting claim 1, the Patent Office cites the implant shown in Howland's Fig. 12 as being the claimed "planar unitary body." Although never explicitly stated, Applicants *assume* that the legs 128 in elements 106 and 108 are alleged to form the first and second saddles. *See*, Howland, Fig. 12. However, as more clearly shown in Fig. 11, Howland does not describe a planar unitary body having first and second saddles. Instead, Howland's implant includes two separate elements 106 and 108 that clamp together between adjacent spinous processes.¹ Only when elements 106 and 108 are joined together are the alleged saddles formed. *See*, Howland, Figs. 10 and 12. Accordingly, no single "planar unitary body" in Howland includes the claimed saddles. For at least this reason, independent claim 48 and its respective dependent claims define patentable subject matter over Howland.

¹ Howland states that "[t]he first and second elements, 106 and 108, respectively, of the spacer are joined by inserting the tongue of the second element into the slot of the first element." Howland, col. 8, ll. 53-55.

Related limitations are found in independent claims 52, 55, and 57. For example, claim 52 requires, *inter alia*, a "planar unitary body having a first end that defines a first saddle and a second end that defines a second saddle." Claim 55 requires, *inter alia*, "a unitary central planar body with first and second saddles located on opposite first and second sides of the planar body respectively." Likewise, claim 57 requires, *inter alia*, "a unitary planar body....the first end of the planar body defining a first saddle " and "the second end of the planar body defining a second saddle." As discussed above, no single unitary body includes first and second saddles, as required by the claim. Thus, for reasons substantially similar to those described above, Howland does not anticipate any of the pending claims.

In view of the above amendments and remarks, the Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,
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